

REMARKS

Claims 5-6 were rejected under §112, second paragraph. The rejection of claim 5 has been remedied in the present amendment and reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1-5 and 7-10 were rejected as anticipated by KAWAGOE 6,438,563 and claims 6 and 11-13 were rejected as unpatentable over KAWAGOE. Reconsideration and withdrawal of the rejections are respectfully requested.

KAWAGOE issued as a patent on August 20, 2002. The present application was filed on June 4, 2001. Accordingly, KAWAGOE is only available as a reference under 35 USC 102(e).

MPEP §706.02(1)(1) states that effective November 29, 1999, subject matter that was prior art under 35 USC §103 via 35 USC §102(e) is disqualified as prior art against the claimed invention if the subject matter in the claimed invention "were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

MPEP §706.02(1)(2) states that "commonly owned" means wholly owned by the same person or organization at the time the claimed invention was made. The present application is assigned to NEC Corporation of Tokyo, Japan. KAWAGOE was at the time of the present invention assigned to NEC Corporation of Tokyo, Japan. Applicants assert that at the time the invention was

made, KAWAGOE and the present invention were commonly owned by NEC Corporation.

Accordingly, 35 USC §103(c) applies to each of claims 6 and 11-13 in which KAWAGOE is used as a §103 reference. Since KAWAGOE is disqualified as prior art by operation of 35 USC §103(c), claims 6 and 11-13 are patentable.

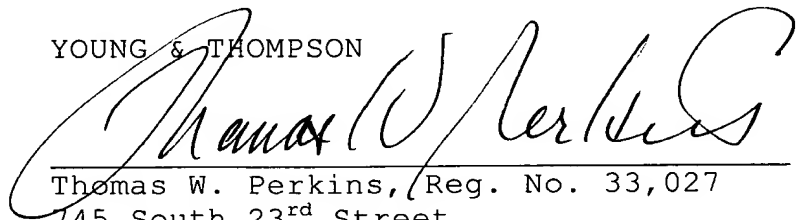
Claim 1 has been amended to include the subject matter of claims 5-6 and thus is also patentable. Claims 2-4 depend from amended claim 1 and are allowable therewith. Claims 5-10 have been canceled.

In view of the present amendment and the foregoing remarks, it is believed that the present application has been placed in condition for allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



Thomas W. Perkins, Reg. No. 33,027  
745 South 23<sup>rd</sup> Street  
Arlington, VA 22202  
Telephone (703) 521-2297  
Telefax (703) 685-0573  
(703) 979-4709

TWP/msd